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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy Rules	)	MM Docket No. 87-8

REPLY COMMENTS OF NATIONAL BROADCASTING COMPANY, INC.

Only a few participants in this proceeding oppose repeal or substantial relaxation of the Commission's television station ownership rules. Those that do contend that any meaningful change in these restrictions would seriously harm localism and viewpoint diversity. In these Reply Comments, NBC will demonstrate that there is no basis for these concerns.

I. INCREASED NETWORK OWNERSHIP OF TELEVISION STATIONS WILL NOT HARM LOCALISM

The Network Affiliated Stations Alliance ("NASA") vigorously opposes any change in the 25% national coverage cap on the grounds that it "would increase the power of networks over their affiliates...and do violence to important Commission policies favoring localism in television broadcasting." (NASA Comments at 5).

NBC is somewhat mystified by NASA's fears. A network that owns local television stations is likely to be more, not less, sensitive to the concerns NASA expresses. A network's owned stations are not mere conduits for network programming. They are an essential and integral part of its overall business. With a substantial investment in station ownership, a network company cannot afford to give short shrift to local programming service, turn a deaf ear to local station concerns or ignore feedback from its station managers. Nor is it likely to consider bypassing local station distribution "by slowly transferring programming from free over-the-air television to cable services," as is suggested by AFLAC.[1]

NASA argues that in this era of expanding national media services, the need for local media outlets -- attuned to serving the needs of local communities -- is more important than ever. We agree. What we don't understand is NASA's assumption that network owned stations will behave differently than non-network owned stations in recognizing and fulfilling this need.

Local programming service is what makes free over-the-air broadcasting different from any of its competitors. It is the unique attribute of our medium that allows broadcast stations and networks to continue to attract the majority of the audience despite growing competition from new national and local outlets. Any station owner that ignores localism -- indeed, any station owner that fails to capitalize on the unique competitive advantage localism provides -- does so at its peril.

Recognizing the importance of strong local identity and local programming, the NBC Network always tries to affiliate with local stations that are first in their markets in local news. We are motivated by pure business self-interest: NBC Network programming almost invariably performs better on stations that have highly rated local news programs and strong local identities.

NBC's owned stations also strive to be first in their markets in local news, information and other programming responsive to community needs and interests. It is simply good business, both for NBC's owned stations and for the NBC Network. If our owned stations were to neglect local needs and interests to become mere spigots for network programming, their audiences would decline as viewers turned to competing stations for local news, sports and information.

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[1] Consolidated Comments of AFLAC Broadcast Group, Inc. at 13.

Owned station revenues would follow suit. Any short term gain in Network revenues that might be realized if owned stations provided less local programming in exchange for increased Network clearances would be more than off-set by the long term negative impact on station revenues -- revenues which help to sustain enormous investments the Network must make in entertainment programming, sports programming and worldwide newsgathering operations. And since the success of the Network's programming is demonstrably correlated with the success of its affiliates' and owned stations' local programming, in the long run the Network's ratings would suffer as well.

The record before the Commission confirms the commitment of network owned stations to localism, not the doomsday scenario painted by NASA. As NBC pointed out in its initial Comments, each NBC owned station averages over 30 hours per week of local news programming, 48% more than in 1989. NBC's owned stations often preempt the Network to broadcast programs of local interest and concern. When major local events have occurred, such as Hurricane Andrew in Miami, the Los Angeles earthquake, or the World Trade Center bombing, NBC's owned stations in Miami, Los Angeles and New York preempted many hours of Network programming to provide their viewers with local news coverage and critical information. In addition, NBC O&O's often preempt the Network feed to present scheduled programming of local interest, including local sports, news and cultural events.

NASA and other commenters also contend that increased network ownership would diminish the ability of affiliates to serve local communities by increasing the networks' "power" relative to affiliates. They contend that if networks owned more stations, the negotiating position of the remaining affiliates would be so weakened that they would not be able to withstand network demands for increased clearances, to obtain fair compensation, to get the networks to respond to their viewers' needs, or get networks to listen to affiliate concerns.

NBC believes this totally mischaracterizes the network/affiliate relationship. We are not adversaries, struggling to do each other in. Rather the relationship is a joint enterprise in which both parties share the common goal of maximizing the audience that watches local network affiliates in each market. The larger the audience, the greater the value created for the Network, its affiliates and the enterprise as a whole. To attract this large audience, the Network must make enormous investments in the most attractive and compelling entertainment programming, major national sports events, and in the collection and production of international and national news. However, the local affiliate must also play its part. It must provide viewers with the most compelling and informative local programming -- particularly local news and information. But it must also make network programs available to the audience by clearing them. Without some assurance of clearance, a network cannot take the huge financial risks required to finance new entertainment programs or to acquire the broadcast rights to the Olympics. And if networks can't take these risks, the value of the joint enterprise will ultimately be diminished.

Because a network ideally needs 100% clearance to justify programming investments, it could never ignore the demands or concerns of even a small number of affiliates. Even accepting AFLAC's hypothetical that a network would purchase stations in large markets covering 50% of the country, it would still have to obtain clearances on stations representing the remaining 50% to maintain the viability of its network business. Quite apart from the critical need for high clearances, a network would be foolish to ignore the programming concerns of affiliates that might reflect the interests and tastes of millions of viewers. A program that gets cleared but does not get watched is of no benefit to anyone. Thus, the suggestion that increased station ownership by networks will deprive non-network owned stations of all leverage in dealing with their network is simply nonsense.

Finally, NBC contests the view that the recent negotiations over long term network affiliation contracts indicate that the balance of power in network/affiliate relationship is tilting toward the networks. The latest round of network-affiliate contract negotiations was triggered by bidding wars among NBC, ABC, CBS and FOX to obtain and maintain affiliations, and resulted in increased compensation payments to stations of between $50 and $100 million per network, according to public estimates. This is eloquent testimony to where the balance of power in the network/affiliate relationship now lies.

The new NBC affiliation agreement reflects the mutual goals of the network and its affiliates. It recognizes the importance to the network/affiliate system of <u>both</u> strong local stations serving local communities <u>and</u> of some assured level of network program clearances. Under the new agreement, NBC has for the first time committed to providing programming to its affiliates for 7 to 10 years in specific time slots -- a commitment to make enormous investments in entertainment, news and sports programming for many years to come. In return, the affiliates' clearance obligations are spelled out with more precision. The contract does not make it "difficult if not impossible" for affiliates to preempt network programming. Affiliates are totally free to preempt NBC Network programming for local news. An affiliate is also free to preempt the Network if it believes the programs the Network offers would not meet the prevailing standards of good its local community. However, NBC and each affiliate have negotiated a commercial arrangement covering non-news preemptions above an agreed-to number of hours. This gives NBC some assurance of the clearances it needs to support the enormous cost of programming it has now committed to provide.

Contrary to the impression left by NASA's Comments, the new agreement was negotiated amicably, first with NBC's Affiliate Board to create a model agreement, and then market-by-market across the country. In each case, these private, market-driven negotiations were successfully concluded in a manner that was acceptable to both parties. Rather than demonstrating an increase in network "power," the process indicates that the NBC Network and its affiliates enjoy relatively equal bargaining strength, and that we share a number of important goals for the network/affiliate system.

II. INCREASED GROUP OWNERSHIP IS NOT A THREAT TO DIVERSITY

A number of community and consumer organizations oppose any change in the Commission's television ownership rules, claiming that even relaxation would have a "detrimental impact...on the diversity of programming available to listeners and viewers, especially in the area of news, public affairs, and issue responsive programming."[2] These concerns are groundless. As NBC argued in its initial Comments, the marketplace of ideas is so diverse and vibrant that application of competition policy principles to broadcast station ownership would perforce prevent any acquisition or merger on traditional antitrust grounds long before there was any significant threat to diversity.

BCFM's diversity concerns derive from a number of faulty premises which have already been refuted in initial Comments filed by NBC and others. For example, BCFM contends that viewpoint diversity is achievable only through ownership diversity, ignoring the clear economic incentive an owner of multiple media outlets has to appeal to a broad variety of audiences.[3] It also claims that there is no adequate substitute for broadcast television for purposes of viewpoint diversity. This argument ignores the extraordinary inter-media competition that exists in the marketplace of ideas. It also begs the central question whether television station owners could somehow dominate public debate or limit access to competing media. The answer is clearly no. And it is also clear that if a group-owned television station failed to provide informational

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[2] Comments of Black Citizens for Fair Media et al. at iii (hereinafter "BCFM Comments").

[3] We refer the Commission to pp. 17-22 of the Comments filed in this proceeding by CBS Inc. for a more complete discussion of the fallacy of BCFM's position.

programming -- or tried to impose a monolithic viewpoint across commonly owned media in a single community -- consumers would quickly turn to other, competing outlets that would fill the breach.

NBC also disputes BCFM's view that entertainment programming has no relevance to the Commission's diversity goals. While the Commission has traditionally been primarily concerned with news and informational programming, it should not completely discount the ability of entertainment programming to inform, or the important influence non-news programming can have on public debate.[4]

Finally, citing a study that is now six years old, BCFM contends that there is empirical evidence showing that the increased group ownership that occurred after the Commission relaxed national ownership limits in 1984 led to "significant decreases in news and public affairs programming." This study was submitted to the Commission in the 1991 Notice of Inquiry phase of this Docket. In the subsequent Notice of Proposed Rulemaking, the Commission referred to the study and noted that the claim BCFM now repeats "is based on a sample of only 5 of the over 200 television markets, [and therefore] it is not clear that the study is representative of television stations or markets in general."[5]

Moreover, as NBC pointed out in its Comments responding to the 1992 NPRM, the data in the study do not support the proposition that increased group ownership after 1984 resulted in a reduction of local programming. According to the study:

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4 See, "An Economic Analysis of the Broadcast Television National Ownership, Local Ownership, and Radio Cross-Ownership Rules," filed in this proceeding on behalf of NBC, CBS and Capital Cities/ABC on May 17, 1995, p. 53.

5 Notice of Proposed Rulemaking, MM Docket No. 91-221, June 12, 1992, n. 23.

- By 1989 owners that had increased the number of stations they controlled (a) broadcast 9% more local news than they had in 1984, and (b) broadcast 16% more local news than the individually owned stations studied.

- By 1989, the only program category in which individually owned stations broadcast more local programming than group owners who had increased their complement of stations was local public affairs, and there the difference between the two types of stations was a statistically insignificant 0.4%.

- Group owned stations broadcast more <u>total</u> (local and national) public affairs programming than individually owned stations in both 1984 and 1989.

- By 1989, individually owned stations were not yet broadcasting as much local news as group owned stations had provided 5 years earlier.

Thus, apart from a statistically insignificant difference in the amount of local public affairs programming broadcast by group owned stations whose owners acquired additional stations after deregulation, the study cited by BCFM actually <u>supports</u> the following propositions advanced by the proponents of repeal of station ownership restrictions:

- Increased group ownership in general leads to more news and public affairs programming, and

- Group owned stations offer more news (local and national) and more total public affairs than stations that are individually owned.

III. CONCLUSION

No opponent of repeal or relaxation of the television ownership rules has offered a marketplace or competition policy basis for continued regulation. The arguments the opponents do advance -- that changes in the Commission's multiple ownership, duopoly and one-to-a-market rules will prove detrimental to localism and diversity -- cannot withstand scrutiny.

Respectfully submitted,

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